



# JOURNAL

JOURNAL OF THE CENTER FOR FAMILIES, CHILDREN & THE COURTS

VOLUME 6 ♦ 2005

## COURTS RESPONDING TO DOMESTIC VIOLENCE

CONFRONTING THE ISSUE OF GUN SEIZURE IN DOMESTIC VIOLENCE CASES

*Emily J. Sack*

THE COURT'S ROLE IN SUPPORTING AND PROTECTING CHILDREN EXPOSED  
TO DOMESTIC VIOLENCE

*Hon. Donna J. Hitchens & Patricia Van Horn*

ADDRESSING THE CO-OCCURRENCE OF DOMESTIC VIOLENCE AND SUBSTANCE  
ABUSE: LESSONS FROM PROBLEM-SOLVING COURTS

*Lisa Lightman & Francine Byrne*

FROM BEHIND CLOSED DOORS: SHEDDING LIGHT ON ELDER ABUSE AND  
DOMESTIC VIOLENCE IN LATE LIFE

*Mary Twomey, Mary Joy Quinn & Emily Dakin*

PARENTING ARRANGEMENTS AFTER DOMESTIC VIOLENCE: SAFETY AS A PRIORITY  
IN JUDGING CHILDREN'S BEST INTEREST

*Peter G. Jaffe, Claire V. Crooks & Hon. Frances Q.F. Wong*

WHAT IS A FAMILY? A FRED FRIENDLY SEMINAR

*Charles J. Ogletree, Moderator*

A BRIEF PRIMER ON CASE LAW ADDRESSING PARENTAGE ISSUES FOR  
NONBIOLOGICAL PARENTS BEFORE 2005

*Frank H. Free*

PARENTAGE BY INTENTION FOR SAME-SEX PARTNERS

*Diana Richmond*

LEGITIMATE PARENTS: CONSTRUING CALIFORNIA'S UNIFORM PARENTAGE ACT  
TO PROTECT CHILDREN BORN INTO NONTRADITIONAL FAMILIES

*Jenny Wald*

## PERSPECTIVES

AN OPEN LETTER TO THE CALIFORNIA JUDICIARY: ADMINISTRATION OF JUSTICE  
IN DOMESTIC VIOLENCE CASES

*Hon. Laurence D. Kay (Ret.)*

ENGAGING MEN AND BOYS IN DOMESTIC VIOLENCE PREVENTION STRATEGIES:  
AN INVITATION TO THE COURTS

*Hon. Ronald Adrine & Michael W. Runner*



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The *Journal of the Center for Families, Children & the Courts* is a periodical dedicated to publishing a full spectrum of viewpoints on issues regarding children, families, and the interplay between these parties and the courts. Focusing on issues of national importance, the journal encourages a dialogue for improving judicial policy in California.

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The *Journal of the Center for Families, Children & the Courts* welcomes submissions addressing contemporary issues in family and juvenile law, the administration of family and juvenile courts, and the provision of court-connected services to children and families. The journal seeks to foster dialogue among various practical and academic disciplines, and so invites contributions from the fields of law, court administration, medicine and clinical psychology, the behavioral and social sciences, and other disciplines concerned with the welfare of children and families.

Manuscripts submitted for publication should be sent to Christine Cleary, Editor in Chief, *Journal of the Center for Families, Children & the Courts*, Judicial Council of California, 455 Golden Gate Avenue, Sixth Floor, San Francisco, CA 94102-3688, [christine.cleary@jud.ca.gov](mailto:christine.cleary@jud.ca.gov). A manuscript—including endnotes, tables, and figures—should not exceed 30 double-spaced typed pages. Authors should follow the style guidelines of *The Bluebook: A Uniform System of Citation* (18th ed.), published and distributed by the *Harvard Law Review*, when preparing their manuscripts. Authors should send one copy of the manuscript along with a 100-word abstract and a biographical sketch. Authors may submit their manuscripts electronically, in Microsoft® Word 97 or later, to the e-mail address above.

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# Contents

**xii** Editor's Note

**xiv** Contributors

## **3** Confronting the Issue of Gun Seizure in Domestic Violence Cases

*Emily J. Sack*

Professor Sack reviews federal firearms laws relating to domestic violence, discusses issues affecting their interpretation, and examines difficulties that have arisen in their enforcement. She then analyzes state laws designed to address firearms and domestic violence and discusses legal issues that have arisen in their implementation. She concludes with several recommendations to state judges, law enforcement officials, and prosecutors for effective policies and procedures gleaned from the lessons of jurisdictions in other states.

## **COURTS RESPONDING TO DOMESTIC VIOLENCE**

## **31** The Court's Role in Supporting and Protecting Children Exposed to Domestic Violence

*Hon. Donna J. Hitchens & Patricia Van Horn*

The authors summarize literature on the effects on children of witnessing domestic violence, the impact of violence on parenting behavior, and factors that have been found to influence children's safety with offending parents. They describe barriers to the application of the literature, recommend specific ways that courts can work together to serve children and families, and propose policies that protect children's interests.

## **53** Addressing the Co-occurrence of Domestic Violence and Substance Abuse: Lessons From Problem-Solving Courts

*Lisa Lightman & Francine Byrne*

Recognizing that crimes related to both substance abuse and domestic violence place an enormous burden on society, the authors explore the challenges and potential benefits involved in addressing the co-occurrence of substance abuse and domestic violence through the model of problem-solving courts. They include examples of best practices for developing similar programs in other courts.

## Contents, continued

### COURTS RESPONDING TO DOMESTIC VIOLENCE

#### **73** From Behind Closed Doors: Shedding Light on Elder Abuse and Domestic Violence in Late Life

*Mary Twomey, Mary Joy Quinn & Emily Dakin*

California's burgeoning elderly population presents a significant challenge to the courts to address the anticipated increase in elder abuse and domestic violence late in life. The authors provide background information on elder abuse, including its incidence and prevalence, theories about why it occurs, barriers to providing services specific to older victims, and issues for the courts to address, along with discussion of promising practices.

#### **81** Parenting Arrangements After Domestic Violence: Safety as a Priority in Judging Children's Best Interest

*Peter G. Jaffe, Claire V. Crooks & Hon. Frances Q.F. Wong*

Acknowledging the growing role of the family court in domestic violence cases, particularly in determining parental contacts following allegations of domestic violence, the authors outline some of the controversies that arise in postseparation parenting plans where one parent has a history of perpetrating domestic violence against the other parent. They provide strategies for courts to limit the opportunities for children to be exposed to parental conflict and violence.

### PARENTAGE ISSUES CHALLENGING CALIFORNIA'S JUDICIAL SYSTEM

#### **99** What Is a Family? A Fred Friendly Seminar

*Charles J. Ogletree, Moderator*

A renowned panel of experts discusses parentage issues challenging California's courts in this edited and abridged transcript of a Fred Friendly Seminar presented at the December 2004 Beyond the Bench Conference, sponsored by the Administrative Office of the Courts, Center for Families, Children & the Courts.

#### **121** A Brief Primer on Case Law Addressing Parentage Issues for Nonbiological Parents Before 2005

*Frank H. Free*

The author introduces and discusses the primary California cases that conferred full legal rights and responsibilities on nonbiological "presumed parents" before 2005.

## PARENTAGE ISSUES CHALLENGING CALIFORNIA'S JUDICIAL SYSTEM

### 125 Parentage by Intention for Same-Sex Partners

*Diana Richmond*

The author explores the different modes that the California courts have used in determining parentage and advances the premise that the court's existing test of determining parenthood in assisted reproductive technology cases—the parties' intention at conception—is the most preferable. She discusses the California Supreme Court's recent decisions in three same-sex parentage cases in an afterword.

### 139 Legitimate Parents: Construing California's Uniform Parentage Act to Protect Children Born Into Nontraditional Families

*Jenny Wald*

The author provides legal background and context for three recent California Supreme Court decisions involving same-sex parents, analyzes the Uniform Parentage Act (UPA) in the context of its protection of this state's children, and discusses additional bases under the UPA for establishing legal parentage.

## PERSPECTIVES

### 163 An Open Letter to the California Judiciary: Administration of Justice in Domestic Violence Cases

*Hon. Laurence D. Kay (Ret.)*

Justice Kay, chair of a new Judicial Council task force focused on improving court practice and procedure in domestic violence cases, shares his personal observations on the essential ingredients needed to ensure the fair, efficient, and accessible administration of justice in this critical area. He highlights recommendations of concern to the courts from *Keeping the Promise: Victim Safety and Batterer Accountability: Report to the California Attorney General From the Task Force on Local Criminal Justice Response to Domestic Violence* (June 2005).

### 175 Engaging Men and Boys in Domestic Violence Prevention Strategies: An Invitation to the Courts

*Hon. Ronald Adrine & Michael W. Runner*

The authors focus on the prevention of domestic violence, particularly efforts to engage men and boys in prevention strategies. They outline the importance of prevention and how it contrasts with traditional intervention, describe early public awareness and prevention strategies, review research on men's attitudes toward domestic violence, and introduce some recent research-based initiatives to engage men and boys.

## Editor's Note

The Judicial Council of California and the Administrative Office of the Courts are pleased to present Volume 6 of the *Journal of the Center for Families, Children & the Courts*,

which focuses on court responses to domestic violence. The Judicial Council has signaled its ongoing concern about the significant issues presented in domestic violence cases by recently naming a statewide task force to study ways to improve court practice and procedure in

***The council's overarching goal is to ensure fair, expeditious, and accessible justice for domestic violence litigants while promoting both victim safety and perpetrator accountability.***

those cases. The task force, in collaboration with expert and innovative judges and court administrators, will consider recommendations to improve protective-order forms, develop procedural guidelines, and improve the accurate and timely entry of restraining orders into the statewide database. The

council's overarching goal is to ensure fair, expeditious, and accessible justice for domestic violence litigants while promoting both victim safety and perpetrator accountability.

The articles in the focus section cover a broad range of domestic violence issues that confront our courts. Professor Emily J. Sack leads off by providing background on federal and state gun seizure laws and suggesting best practices on the issue of gun seizure in domestic violence cases. Then Judge Donna J. Hitchens and Dr. Patricia Van Horn discuss the effects of witnessing domestic violence on children and make specific recommendations about ways that the courts can work together to better serve children and families, including proposed policies to protect children's interests. Next, Lisa Lightman and Francine Byrne grapple with the challenges and potential benefits of addressing the co-occurrence of substance abuse and domestic violence through the model of problem-solving courts. Mary Twomey, Mary Joy Quinn, and Dr. Emily Dakin shed light on elder abuse and domestic violence in late life by providing background information: the incidence and prevalence of elder abuse, theories

on the reasons elder abuse occurs, and barriers to services specific to older victims. Finally, Dr. Peter G. Jaffe, Dr. Claire V. Crooks, and Judge Frances Q.F. Wong tackle the role of the family court in domestic violence cases, particularly in determining parental contacts following allegations of domestic violence. They provide strategies for courts to limit the opportunities for children to be exposed to parental conflict and violence.

We have devoted our issues forum section to parentage issues challenging California's judicial system. First we introduce the subject through an edited and abridged transcript of a Fred Friendly Seminar on parentage presented at the Administrative Office of the Courts, Center for Families, Children & the Courts' annual Beyond the Bench conference held in December 2004. With Professor Charles J. Ogletree as moderator, a panel of well-known experts wrestle with the issue "What Is a Family?" Then Frank H. Free provides a brief primer on pre-2005 case law addressing nonbiological "presumed parents." Diana Richmond advances the premise that parentage should be determined by using the "intention-of-the-parties" method employed in assisted reproductive technology cases, and she discusses California Supreme Court decisions in three same-sex parentage cases decided in August 2005. Jenny Wald closes with an analysis of California's Uniform Parentage Act, its protection of this state's children, and its place in the discussion about the three recently decided same-sex parentage decisions.

Our Perspectives section features some thoughts by Justice Laurence D. Kay (Ret.) on the essential elements needed for courts to be fair, efficient, and accessible in domestic violence cases. And Judge Ronald Adrine and Michael W. Runner discuss prevention strategies, review research on men's attitudes toward domestic violence, and introduce some research-based initiatives to engage men and boys.

We welcome your comments and suggestions on how we can improve the journal to ensure that it continues to feature a full spectrum of viewpoints on issues regarding the interplay between children, families, and the courts in order to encourage a dialogue for improving judicial policy in California.

—Chris Cleary

# Contributors

**HON. RONALD ADRINE** has served on the bench of the Cleveland (Ohio) Municipal Court since 1981. He served as a member of the Governor's Task Force on Family Violence in Ohio, the Ohio Attorney General Victims Assistance Advisory Board, the Domestic Violence Task Force of the Ohio Victims Assistance Advisory Board, and the Supreme Court of Ohio's Domestic Violence Task Force. He also serves as chair of the board of directors of the Family Violence Prevention Fund and was elected to serve as the first chair of Cleveland's Domestic Violence Coordinating Council. Judge Adrine has lectured extensively on domestic violence issues for a host of organizations, associations, and governmental agencies, and he chairs the faculty of the National Judicial Institute on Domestic Violence, a joint initiative of the National Council of Juvenile and Family Court Judges and the Family Violence Prevention Fund financed by the U.S. Department of Justice.

**FRANCINE BYRNE, M.A.**, has been a senior research analyst with the AOC Center for Families, Children & the Courts since September 2004. Before joining the CFCC, she was a project coordinator for the Center for Health Care Evaluation in Palo Alto. She has collaborated on projects related to Court Appointed Special Advocates and the area of guardianship and recently completed a multiphase, statewide cost-benefit evaluation of drug courts. She received a master's degree in sociology from the University of Massachusetts in Boston and a bachelor's in international relations from California Lutheran University.

**CLAIRE CROOKS, PH.D., C.PSYCH.**, is associate director of the Centre for Addiction and Mental Health, Centre for Prevention Science. She is also an assistant professor at the Centre for Research on Violence Against Women and Children and an adjunct professor in the Psychology Department at The University of Western Ontario. In February 2005, Crooks provided testimony on understanding the intersection between domestic violence and divorce as an issue relevant to the U.N. Convention on the Rights of the Child to the Senate Committee on Human Rights for the Canadian federal government. She co-founded the Caring Dads program, a parenting intervention for men who have maltreated their children. Crooks has co-authored numerous articles and chapters on topics including children's exposure to domestic violence, child custody and access, adolescent dating violence and risk behavior, intervening with fathers who maltreat their children, and trauma.

**EMILY DAKIN, M.S.S.A., PH.D.**, is a National Institutes of Health postdoctoral research fellow at the University of California at San Francisco, where she is evaluating the use of multidisciplinary teams and geriatric assessments in elder abuse cases. Dakin previously was coordinator of the Institute on Aging's information and referral program and was assistant director of its elder abuse prevention program. She received a bachelor's degree in psychology from Oberlin College and a master of science in social administration and a Ph.D. in social welfare from Case Western Reserve University.

**FRANK H. FREE** is an attorney in private practice in Oakland, emphasizing juvenile dependency, family, and criminal law in both the trial and the appellate courts. He is a graduate of the University of California at Berkeley and Golden Gate University School of Law. He represented the presumed father in *In re Nicholas H.*, discussed in his article. Free is a member of the Amicus Committee of the Northern California Association of Counsel for Children.

**HON. DONNA J. HITCHENS** was the presiding judge of the Superior Court of California, County of San Francisco from 2003 to 2005, after many years of serving as the presiding judge of the unified family court. In 2001 she was awarded the Benjamin Aranda III Access to Justice Award. Sponsored by the Judicial Council, the State Bar, and the California Judges Association, the award is presented annually to a trial judge or appellate justice whose activities demonstrate a long-term commitment to improving access to the courts for low- and moderate-income Californians. Judge Hitchens was instrumental in securing federal grants that assisted San Francisco County's selection as a demonstration site for the SafeStart Initiative and the Greenbook Project, both projects dealing with issues of family violence.

**PETER G. JAFFE, PH.D., C.PSYCH.**, is a member of the clinical adjunct faculty for the Departments of Psychology and Psychiatry at The University of Western Ontario and academic director at the university's Centre for Research on Violence Against Women and Children. He was the founding director of the Centre for Children and Families in the Justice System (London, Ontario, Canada), a children's mental health center specializing in issues that bring children and families into the justice system, and the founding chair of the London Coordinating Committee to End Woman Abuse. He is currently actively involved in research on the impact of family violence on children. He serves as a faculty member of the family violence department of the National Council of Juvenile and Family Court Judges' "Enhancing Judicial Skills in Domestic Violence Cases" workshops. Jaffe has co-authored several books on domestic violence, including *Children of Battered Women*, 21 *Developmental Clinical Psychology and Psychiatry* (with David A. Wolfe and Susan Kaye Wilson, Sage Publ'ns 1990), and edited *Working Together to End Domestic Violence* (Nancy K.D. Lemon et al., Mancorp Publ'g 1996).

**HON. LAURENCE D. KAY** recently retired as presiding justice of the Court of Appeal, First Appellate District, Division Four (San Francisco). Justice Kay was appointed in September 2005 by Chief Justice Ronald M. George to chair a new statewide task force that will study ways to improve practice and procedure in domestic violence cases. While serving on the appellate court, Justice Kay authored more than 40 published opinions and participated in hundreds of other cases. Appointed to the Judicial Council of California in 2002, he served as vice-chair of the council's Policy Coordination and Liaison Committee and is outgoing chair of the Rules and Projects Committee. He received the Trial Judge of the Year award from San Francisco Trial Lawyers Association in 1994 and the Appellate Justice of the Year award in 2004 from Consumer Attorneys of California.



## *Contributors, continued*

**LISA LIGHTMAN, M.A.**, is a court services analyst with the AOC Center for Family, Children & the Courts' Family Dispute Resolution unit, where she organizes training and education programs for family court mediators and evaluators. In her former position with the Collaborative Justice Programs unit of the AOC's Executive Office Programs Division, she was responsible for developing communications strategies and training and educational outreach about innovative court programs for court staff and key stakeholders. Lightman is a current faculty member for the National Drug Court Institute's adult drug court training initiative. She began her career in drug courts as the statewide director of drug courts at New Mexico's Administrative Office of the Courts. She has a liberal arts degree from Hampshire College and a master's degree in public policy from Tufts University in Medford, Massachusetts.

**MARY JOY QUINN, R.N., M.A.**, served as a conservatorship investigator for 12 years and has been the director of the Superior Court of San Francisco County's probate court since 1989. She received a B.S. degree from the University of Oregon and an M.A. from the University of San Francisco. She has written and lectured extensively in the fields of elder abuse and neglect, undue influence, and conservatorship of adults. She serves as a commissioner on the American Bar Association's Commission on Law and Aging and is a member of the Judicial Council's Probate and Mental Health Advisory Committee. In 2004, the U.S. General Accounting Office recognized the work of San Francisco County's probate court by designating it as one of four exemplary probate courts in the United States.

**DIANA RICHMOND** is a partner in the law firm of Sideman & Bancroft LLP in San Francisco and was trial and appellate counsel for E.G. in the case of *K.M. v. E.G.* decided by the California Supreme Court. A certified family law specialist since 1980, she is co-editor (with Kathryn Kirkland and Ira Lurvey) of *California Family Law Practice and Procedure, Second Edition* (LexisNexis/Matthew Bender 1994 & updates).

**MICHAEL W. RUNNER** is the Family Violence Prevention Fund's (FVPF) director of legal programs, which includes the FVPF partnership in the National Judicial Institute on Domestic Violence, a joint project with the U.S. Department of Justice Office on Violence Against Women and the National Council of Juvenile and Family Court Judges. Since 1999, the National Judicial Institute has presented a three-day, comprehensive domestic violence workshop, "Enhancing Judicial Skills in Domestic Violence Cases," to more than 800 state court judges nationwide. For 10 years, Runner was the assistant director for programs of the AOC Center for Judicial Education and Research.

**EMILY J. SACK, M.A., M.PHIL., J.D.**, is an associate professor of law at Roger Williams University School of Law, where she teaches criminal law, domestic violence law, and family law. She helped develop the first domestic violence courts in New York State and the Manhattan Family Treatment Court, which handles cases of parents charged with child neglect due to substance abuse. The Manhattan court received an Innovations in American Government Award from the Ford Foundation and Harvard University. Sack continues to be interested in the development of specialized courts and court reform initiatives, and her research focuses on the tensions in areas where family law and criminal law intersect, such as domestic violence and child neglect. She received her juris doctor from New York University School of Law and her master's degrees in European history from Columbia University.

**MARY TWOMEY, M.S.W.**, is the director of the San Francisco Consortium for Elder Abuse Prevention, a program of the Institute on Aging. Twomey was formerly director of social services at the Volunteer Legal Services Program of the Bar Association of San Francisco. She spent 11 years with the national office of the American Association of Retired Persons in Washington, D.C., where she coordinated the National Guardianship Monitoring Project, a program that worked with judges and court staff throughout the country to improve the courts' oversight of adults under conservatorship and guardianship.

**PATRICIA VAN HORN, PH.D., J.D.**, is a licensed clinical psychologist, a staff psychologist, and assistant clinical professor in the Department of Psychiatry at the University of California at San Francisco and the director of training of the UCSF Child Trauma Research Project located at San Francisco General Hospital. Van Horn received her J.D. in 1970 from the University of Colorado School of Law and her Ph.D. in 1996 from the Pacific Graduate School of Psychology. Her current work at the Child Trauma Research Project is with children under age 6 who have witnessed domestic violence. Van Horn was the lead planner for the San Francisco SafeStart Initiative and is a member of the steering committee of the Youth Family Violence Court in San Francisco's unified family court. She has lectured widely on the subjects of early childhood development and the impact on young children of witnessing domestic violence.

**JENNY WALD** is a managing associate at the Hersh FamilyLaw Practice in San Francisco, where her practice focuses on trial and appellate work and she specializes in complex legal issues and cases involving same-sex parentage. She completed mediation training with the Northern California Mediation Center and has mediated dissolutions and other family law disputes. From May 2002 to June 2003 Wald was a child custody attorney with the Administrative Office of the Courts, Center for Families, Children & the Courts. She is also on the faculty of San Francisco Law School, where she has taught legal writing and community property. She graduated from University of California, Hastings College of the Law in 1997.

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## *Contributors, continued*

**HON. FRANCES Q.F. WONG** serves in the First Judicial Circuit of the State of Hawai‘i and is currently assigned as a deputy chief judge and senior judge of the family court. Judge Wong has also presided over the O‘ahu Drug Court and the felony criminal motions calendar. She was first appointed as a district family judge in 1983 and was subsequently appointed to the circuit court in 1992. She is currently planning a girls’ court and recently received a three-year Juvenile Accountability Block Grant from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, to further her efforts. Judge Wong obtained her juris doctor from the University of Southern California Law Center.